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STATE OF WISCONSIN
BEFORE THE PROFESSIONAL COUNSELOR SECTION
EXAMINING BOARD OF SOCIAL WORKERS
MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

CARY A BACKENGER, CPC,

RESPONDENT.

Case No.: LS9910191PSY

FINAL DECISION AND ORDER

The parties to this action for the purposes of Wis. Stats. §227.53 are:

*Cary A. Backenger, CPC
1724 S. Memorial Dr.
Appleton, WI 54915*

*Professional Counselor Section
Examining Board of Social Workers,
Marriage and Family Therapists and Professional Counselors
PO Box 8935
Madison, WI 53708-8935*

*Department of Regulation and Licensing
Division of Enforcement
PO Box 8935
Madison, WI 53708-8935*

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision in this matter, subject to the approval of the Professional Counselor Section. The Section has reviewed this Stipulation and considers it acceptable.

Accordingly, the Section in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Cary A. Backenger, Respondent, date of birth November 14, 1966, is currently certified as a professional counselor in the State of Wisconsin, pursuant to certificate number 2658, which was first granted on June 2, 1997.
2. Respondent's last address reported to the Department of Regulation and Licensing is 1724 S. Memorial Dr., Appleton, WI 54915.
3. Respondent received a masters degree in guidance and counseling from University of Wisconsin – Stout in May of 1994.

4. From Spring, 1994 to April, 1995, Respondent was employed at an outpatient mental health clinic as an eating disorders specialist. Respondent primarily provided services to individuals with eating disorders, and co-dependency issues and provided some services to individuals with substance and alcohol abuse issues.
5. From April 24, 1995, to September 18, 1998, Respondent was employed as a counselor at Bellin Psychiatric Center in Green Bay.
6. For the first several months of Respondent's employment at Bellin Psychiatric Center, Respondent was assigned to the adult inpatient psychiatric unit.
7. Mr. A, date of birth October 12, 1965, was admitted as an inpatient to the Adult Unit at Bellin Psychiatric Center on June 4, 1995 suffering from depression secondary to his break up with his girlfriend
8. Mr. A's had Axis I diagnoses of major depressive disorder, dysthymic disorder, and alcohol dependence in remission and Axis II diagnoses of dependent and borderline personality features.
9. Respondent was a member of Mr. A's multidisciplinary treatment team at Bellin Psychiatric Center, but was not Mr. A's case manager on the unit. Respondent was involved in formulating the multidisciplinary treatment plan and participated in multidisciplinary staffing regarding Mr. A's progress. Respondent facilitated group therapy sessions which were attended by Mr. A.
10. The records of Mr. A's hospitalization reflect the following contacts between Mr. A and Respondent:
 - a. On June 5, 1995, Respondent noted Mr. A's affect and participation during group therapy that day.
 - b. On June 6, 1995, Respondent met with Mr. A and obtained the information from him necessary for Respondent to complete the "Social History Section/Role Relationship/Value Beliefs" portion of his record.
 - c. On June 15, 1995, Respondent had an individual session with Mr. A and at the direction of Mr. A's doctor provided Mr. A with the book "Rebuilding Relationships." Respondent also "tried to probe what relationships provide him with, their meaning . . ." but found the subject difficult for Mr. A.
11. Mr. A was discharged from inpatient status on the Adult Unit on June 16, 1995 with instructions to continue his antidepressant medications and to continue weekly sessions with an outpatient counselor, who he had been seeing prior to the hospitalization.
12. Shortly after his discharge, Mr. A began stopping by Respondent's office to chat with Respondent when Mr. A arrived early for AA meetings at Bellin. This happened approximately four times and on one of those occasions they chatted so long that Mr. A missed the hour-long AA meeting.
13. Mr. A began occasionally leaving messages on Respondent's voice mail. Respondent would return those calls and in one conversation in late August, 1995 Mr. A told her that he couldn't stop thinking about Respondent. Respondent encouraged Mr. A to speak with a counselor about his feelings, but Mr. A declined to do so.
14. On a Sunday in early September 1995, Mr. A called Respondent at home and asked her to meet him for lunch at a mall after she finished work that day so that they could talk. Respondent told Mr. A that it would not be good if any of her co-workers saw her with him, but she agreed and met him. After lunch Mr. A showed Respondent his residence and while there kissed her and said that now that he had found her he could not lose her
15. Sometime later that week, Mr. A called Respondent and asked her to meet him at a park after work. They met for approximately 20 minutes and talked about their relationship. Respondent explained to Mr. A that she could lose her license and that they would have to wait until two years from June 16, 1995 to "get together." Mr. A said that he wouldn't wait.
16. On July 1, 1995, Respondent's boyfriend of 3 years had moved in with her. Over the summer and fall they had relationship problems and on September 12, 1995, Respondent's boyfriend moved out because she told him she was confused, unhappy and had been thinking of dating other men.
17. On Wednesday evening September 13, 1995, Mr. A went to Respondent's house for dinner. Respondent and Mr. A commenced a sexual relationship that night, which continued until February 1998.
18. On Monday and Tuesday, September 18 and 19, 1995, Respondent was very upset as a result of entering into the relationship with Mr. A. Respondent, called in sick to work both days, and obtained a referral to see a counselor.
19. On September 21, October 5, and October 24, Respondent met with a counselor to discuss her relationship with Mr. A.

20. Mr. A moved into Respondent's house with her in May 1997.

21. Respondent terminated her relationship with Mr. A in February 1998.

22. In January of 1999, Mr. A communicated to Respondent that Mr. A would tell the licensing authorities about their sexual relationship unless Respondent paid Mr. A \$5,000. Respondent reported that information to an associate, who contacted the local police department.

23. Respondent cooperated with the police investigation and Mr. A was arrested and charged in Outagamie County Circuit Court with extortion. He was subsequently convicted of that charge.

CONCLUSIONS OF LAW

1. The Professional Counselor Section of the Wisconsin Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors has jurisdiction over this matter pursuant to §457.26(2), Stats.

2. The Professional Counselor Section of the Wisconsin Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors has authority to enter into this stipulated resolution pursuant to §227.44(5), Stats.

3. Respondent by having engaged in sexual conduct with a client within 2 years of termination of professional services to has committed unprofessional conduct, as defined by Wis. Adm. Code §SFC 20.02(11), and is subject to discipline pursuant to §457.26(2)(f), Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. That the certificate of Cary A. Backenger, CPC, to practice as a professional counselor in the state of Wisconsin is hereby SUSPENDED for a period of at least one year, effective immediately.

2. That Respondent may petition the Professional Counselor Section for the termination of the suspension, after one year, under the following terms and conditions:

a. Respondent shall, at Respondent's own expense, have undergone an assessment by a mental health care provider experienced in assessing health care providers who have become involved sexually with patients.

b. The practitioner performing the assessment must have been approved by the Section, with an opportunity for the Division of Enforcement to make its recommendation, prior to the evaluation being performed.

c. Respondent must provide proof sufficient to the Section that Respondent can practice with reasonable skill and safety of patients and public.

d. If the Section determines to end the suspension, Respondent's certificate shall be limited in a manner to address any recommendations resulting from the assessment, including, but not limited to:

i. Psychotherapy, at Respondent's expense, by a therapist approved by the Section, to address specific treatment goals, with periodic reports to the Section by the therapist.

ii. Additional professional education in any identified areas of deficiency.

iii. Restrictions on the nature of practice or practice setting or requirements for supervision of practice, by a professional approved by the Section, with periodic reports to the Section by the supervisor.

e. Respondent shall appear before the Section on an annual basis, if requested by the Respondent, to review the progress of any treatment and rehabilitation.

3. If Respondent believes that the Section's refusal to end the suspension is inappropriate or that any limitation imposed or maintained by the Section under paragraph 2 is inappropriate, Respondent may seek a class 1 hearing pursuant to §227.01(3)(a), Stats., in which the burden shall be on Respondent to show that the Section's decision is arbitrary or capricious. The suspension or limitations on Respondent's certificate shall remain in effect until there is a final decision in Respondent's favor on the issue.

4. Violation of any term or condition of this Order, or of any limitation imposed under paragraph 2 above, may constitute grounds for revocation of Respondent's certificate as a professional counselor in Wisconsin. Should the Section determine that there is probable cause to believe that Respondent has violated the terms of this Order, or any limitation imposed under paragraph 2 above, the Section may order that Respondent's certificate be

summarily suspended pending investigation of and hearing on the alleged violation.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated at Madison, Wisconsin this 19th day of October, 1999.

Colleen James

Chairperson

Professional Counselor Section